IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 07/10/2003

Coram

The Honourable Mr. Justice V. KANAGARAJ

Crl.O.P. No.17225 of 2003 and Crl.O.P. No. 17271 of 2003
and
Crl.M.P. Nos.4932, 4933, 4942 to 4944 of 2003

1. Pushpak Akarwal
2. Muhesh Goyal ... Petitioners in Crl.
O.P. No.17225 of 2003

Shyamsunder Sardha ... Petitioner in Crl.
O.P. No.17271 of 2003

-Vs-

State of Tamil Nadu,
rep. by Inspector of
Police,
City Crime Branch,
Coimbatore. ... Respondent in both
Crl.O.Ps.

Petitions filed under section 482 Cr.P.C. praying for as
stated below.

For Petitioner : Mr. AR.L. Sundaresan
for Mr. V. Ramajagadeesan

For Respondent : Mr. A.N. Thambidurai,
Govt. Advocate (Crl.side)

:O R D E R

Both the above Criminal Original Petitions have been filed in one and the same case in Crime No.12 of 2003 registered by the respondent. Crl.O.P. No.17225 of 2003 is filed by the accused Nos.5 and 6 and Crl.O.P. No.17271 of 2003 is filed by the 7th accused in the said case, both seeking to call for the records of the case in Crime No.12 of 2003 on the file of the respondent and quash the complaint.

2.The allegations are such as that the petitioners in Crl.O.P.

No.1 7225 of 2003 are dealing in yarn respectively under the name and style of M/s Arvind Cotten and M/s Swastik Yarn Agency in Kolapur District, Maharashtra; that one D. Krishnan, owner and representative of Shri Textiles and S.P. Trading Company of Coimbatore appears to have filed a complaint against the petitioners in both the above Crl.O.Ps. for the alleged commission of offences punishable under sections 420 and 120B of the Indian Penal Code, alleging cheating by way of dishonour of cheques, criminal breach of trust, criminal misappropriation, cheating and fraud and the matter is under investigation.

3. The further case of the petitioners is that they used to issue post dated cheques, as security in advance and on receipt of the same, the de facto complainant would supply yarn to the petitioners and deliver them when the money is realised; that these cheques would be with the de facto complainant; that in spite of there being no arrears on the part of the petitioners towards payment for textile items, the cheques obtained from the petitioners have been illegally and without any consideration retained by the de facto complainant, who has transformed the said cheques to the third party concerned and sent the same for encashment; that the de facto complainant issued notice under section 138 of the Negotiable Instruments Act, threatening the petitioners for imprisonment and though the de facto complainant knew that those cheques were without consideration and in spite of having received the amount in hand, the cheques have been unreasonably sent for collection and after having been returned as "insufficiency of funds", the de facto complainant threatened the petitioners with dire consequences as in the manner aforementioned and in fact, since the complaint had been lodged before the learned Judicial Magistrate No.VI, Coimbatore for the aforementioned offences, the petitioners would ultimately pray to quash the case registered in Crime No.12 of 2003 on the file of the respondent.

4. During arguments, learned counsel appearing on behalf of the petitioners, besides laying emphasis on the facts pleaded in both the above Crl.O.Ps., would also cite decisions rendered, which are as follows:-

(i) In PASUMAI IRRIGATION LTD., CHENNAI vs. MANSI FINANCE (CHENNAI) LTD., CHENNAI (200392) C.T.C. 270), this Court has held:-

" In matters of civil jurisdiction wherein subject matter is based on contract or civil agreement or money transaction, execution of pronotes, bond, cheques etc. only Civil Court is having competent jurisdiction to entertain and decide dispute - On facts held that case is of civil nature in respect of which petition for winding up Company is already pending Complaint quashed by High Court as one of Civil nature."

(ii) In AJAY MITRA vs. STATE OF M.P. & OTHERS (2003(2) CRIMES 196), the Hon'ble Apex Court has held:

" Where the complaint or the FIR does not disclose commission of a cognizable offence, the same case be quashed even at the initial stage.....

The learned Magistrate before whom the complaint was filed passed an order under section 156(3) Cr.P.C., directing the police to investigate the offence as the same was cognizable offence."

In the above case, the police is said to have gone into the facts and after sufficient investigation, ultimately advised the complainant to approach the Civil Court and the Hon'ble Apex Court, in appreciation of those facts and circumstances, would ultimately allow the criminal appeal preferred by the appellant.

(iii) In SHRI NARAYANDAS SOHANLAL BAGADI vs. STATE OF MAHARASHTRA in a case in Criminal No.10503 of 1997, filing an application under section 227 of the Constitution of India and 482 Cr.P.C., the petitioners have prayed for quashing of the F.I.R. pending on the file of the Judicial Magistrate First Class, Ichhalkarnji in Criminal Case No.38 5 of 1997 in which the accused have purchased yarn worth nearly 1 = lakhs from the de facto complainant and have not paid the amount of bill to the complainant and alleging that they have cheated by making statement that they would pay the bill within a particular period, failed to comply with and thereafter on filing the complaint, learned Magistrate has referred it to the police under section 156(3) of the Cr.P.C. and the police having registered and investigated into, found that the complaint does not disclose any offence in which the Court, remarking that it is a clear cut misuse of the process of the criminal Court, by resorting to such complaint with a view of recovering the amount due for which the remedy of filing a civil suit is available to the complainant. The short cut method of approaching the Civil Court and pressurising the other side to make payment under duress of being harassed by the police by calling for investigation and such practice deserves to be depricated and on such grounds, the Bombay High Court has allowed the petition for quashing the complaint.

On citing the above judgments, learned counsel would pray to grant the relief extracted supra.

5. On the other hand, learned Government Advocate, representing the respondent, would also cite a decision of the Hon'ble Apex Court reported in STATE OF KARNATAKA v. M. DEVENDRAPPA & ANOTHER (2002(1) SUPREME 192) wherein the Full Bench of the Supreme Court has held as follows:-

" The factual position highlighted above clearly shows commission of offences and considered in the background of the legal principles enumerated above, the order of learned single judge cannot be maintained and the same is set aside allowing the appeal. We, however, make it clear that whatever we have stated above should not be considered to be expression of opinion regarding the merits of the case, which goes without saying, has to be considered by the concerned Court at an appropriate stage."

This proposition has been held by the Full Bench of the Hon'ble Apex Court in a case registered under sections 465, 468, 471 and 420 read with 120B I.P.C. and the application filed under section 482 Cr.P.C. by the accused seeking discharge. Citing the a bove judgment, learned Government Advocate would

submit that everything depends on the facts of the case and simply for the petitioners having come forward to give a civil colour for the case in hand, the criminality committed on their part cannot be erased and it is upto the Trial Court to find out whether the criminal case is made out or not under the relevant provisions of law, under which the case has been registered and taken up for investigation and therefore, during the time of investigation, it is undesirable on the part of this Court to cause interference and would pray for dismissing the above Crl.O.Ps.

6. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing learned counsel appearing for both, what comes to be known is that a definite criminal complaint has been launched by the de facto complainant in the case for having been cheated by the accused in conspiracy with each other in the name of issuing cheque, as though they had sufficient funds in the Bank, but with an ultimate aim of cheating the party and the same having been registered by the police for the cognizable offence made out on the face of the complaint under sections 420 and 120B I.P.C., they have taken up the matter for investigation and even at the initial stage of investigation, the petitioners have come forward to file the above Crl.O.Ps. seeking to quash the case registered by the respondent in Crime No.12 of 2003. Whether it is the case of civil in nature or a pucca criminal case, it is upto the police to decide initially on the face of the complaint, so as to register the case and after investigation in their final report. Since Criminal Procedure Code has given enormous powers to the police to register the case and investigate into, making use of those provisions of law, the respondent-police have not only registered the case in Crime No.12 of 2003, but also taken it on file for investigation and at this juncture, the petitioners have come forward to file the above Crl.O.Ps. seeking interference by this Court and to quash the criminal case registered and investigated into.

7. It is an agreed norm that normally no interference need be made into the case under the threshold of the investigation unless basically no case is made out or deliberately a false case has been registered. In the recent judgment of the Honourable Apex Court delivered in UNION OF INDIA vs. PRAKASH P.HINDUJA AND ANOTHER reported in IV (200 3) Supreme Laws Today 335, the Honourable Apex Court, considering the point that `whether the High Court can exercise its inherent powers under Section 482 of the Code of Criminal Procedure in a matter where the investigation is pending', following the earlier decisions reported in (1) AIR 1945 PC 18 (EMPEROR vs. NAZIR AHMAD), (2) AIR 1963 SC 447 (STATE OF WEST BENGAL vs. S.N.BASAK) (3)1963 SC 117 (ABHINANDAN JHA AND OTHERS vs. DINESH MISHRA), and (4) 1980 (1) SCC 554 (STATE OF BIHAR AND ANOTHER vs. JAC SALDANHA AND OTHERS) has held:

"... the legal position is absolutely clear and also settled by judicial authorities that the Court would not interfere with the investigation or during the course of investigation which would mean from the time of the lodging of the First Information Report till the submission of the report by the officer-in-charge of police station in Court under Section 173(2) Cr.P.C.,

this field being exclusively reserved for the Investigating Agency."

For all the above discussions held, this Court is of the view that it is neither feasible nor necessary on the part of this Court to cause its interference into the case registered by the respondent in Crime No.12 of 2003 and has taken up for investigation and on a overall consideration of the facts and circumstances of the case and the position of law on the subject, the only conclusion that could be arrived at by this Court is to dismiss both the above Crl.O.Ps. as devoid of merits and the same is ordered accordingly.

8. In result,

(i) both the above Crl.O.Ps. do not merit acceptance and they are dismissed.

(ii) Consequently, Crl.M.P. Nos.4932, 4933, 4942 to 4944 of 2003 are also dismissed.

Index: Yes
Website: Yes
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To
1. Inspector of Police,
City Crime Branch,
Coimbatore.

2. The Public Prosecutor,
Madras.

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